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SUBJECT: KHMER ROUGE TRIBUNAL BRINGS DUCH TO JUSTICE

REF: PHNOM PENH 105

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11. (SBU) Summary. The first substantive hearings of the Khmer Rouge Tribunal got off to a smooth start March 30 with the reading of charges against S-21 torture center director Eang Geuk Eav, known as Duch. The Ambassador and Emboff joined 500 spectators in the auditorium looking into the ultra-modern courtroom of the Extraordinary Chambers in the Courts of Cambodia (ECCC) to witness the historic proceeding which is expected to last until July. A Cambodian clerk of the court read out the charges against Duch and the litany of horrific activities he is alleged to have committed in an hours-long opening session. Deputy Prime Minister Sok An later told the Ambassador that more than 400 news outlets covered this first substantive session, producing reports that Sok An deemed better than past accounts. Duch's emotional expression of remorse on day two captured Cambodian press headlines. The Co-Prosecutors made strong opening statements in favor of conviction while undercutting the defendant's stated regret and also urged consideration of the "joint criminal enterprise" theory that will apply to the additional four accused Khmer Rouge leaders. Cambodian press coverage to date is thorough, uncensored and includes commentary on what constitutes a proper sentence for Duch's alleged crimes against humanity. In these opening days of the first KRT trial, not only is Justice being done, but is being seen to be done in Cambodia. End Summary.

12. (U) Duch is the first to be tried of five former Khmer Rouge (KR) leaders facing prosecution by the ECCC for their role in the atrocities committed under the KR regime. On March 30, the court spent three hours to read out the factual analysis of the allegations against Duch. He stands accused of crimes against humanity, grave breaches of the Geneva Convention of 1949, and premeditated murder and torture in violation of Cambodia's 1956 Penal Code, for actions committed from April 18, 1975 to January 6, 1979.

13. (U) Over five hundred observers packed the court room, with local and international press numbering in the hundreds, to witness the historic event and view first hand the trial of the man accused of being responsible, both directly and indirectly, for the deaths of at least 12,380 men, women, and children. While the court described the initial target of the KR's campaign to be the former regime and enemies of the revolution, by March 30, 1976 the notion of who was an enemy evolved to look for enemies within. As the armed conflict

with Vietnam escalated, so too did the number of Vietnamese civilians and prisoners of war arriving at S-21, as well as those alleged to be aligned with them. The majority of the victims were KR cadre, but also included their family members, officials and supporters of the former regime, minority groups (such as the Cham), S-21 staff, several foreigners (including Americans), and at least four hundred Vietnamese civilians and prisoners of war.

¶4. (U) The matter-of-fact manner in which the court read out the details of the alleged activities to support the charges was in sharp contrast to the horrific and at times gruesome nature of the activities described. The statement outlined the creation and operation of S-21 and its sister re-education site S-24; the chain of command linking the management of S-21 with the top leadership and policies of the KR regime; the routine and barbaric use of torture to extract confessions to implicate other real or perceived enemies of the regime and for use as revolutionary propaganda; and the mass executions which took place at the Choeung Ek killing field.

¶5. (U) Following the conclusion of the factual analysis in the indictment, Duch's attorney, Francois Roux, requested the court to read out ten additional paragraphs contained in the factual analysis, arguing that these paragraphs contained exculpatory evidence and should be included with the inculpatory information or risk denying a fair trial. The court rejected the Defense Counsel's request stating that the timing was not appropriate to present evidence concerning the character of the accused. Rather, a separate opportunity to discuss the matter concerning Duch's character would be available later in the trial's proceedings. The President of the court then granted a request by the Co-Prosecutors to postpone their opening statement until the following morning, given the insufficiency of the remaining time.

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¶6. (SBU) During their opening statement on the second day of proceedings, the Co-Prosecutors painted Duch as a remorseless, brutal, and committed killer. They also argued for the court to allow Duch to be charged under the theory of "joint criminal enterprise," which would have significant consequences for the subsequent prosecution of the four other former KR leaders. According to the official schedule of the trial, following the prosecution's statement, the Defense Counsel would be afforded an opportunity to respond. However, rather than rebutting the prosecution's case against him, Duch himself first addressed the court. While all the while asserting that he was following the orders of his superiors in the Cambodian Communist Party (or Angkar), Duch expressed deep remorse and shame at his role in carrying out the crimes. In a half-hour address to the court, Duch accepted responsibly for his involvement in the torture and deaths of thousands, and delivered a lengthy apology to his victims and their family members.

¶7. (SBU) Comment: The trial of the torture center chief should be the most straightforward of the KR prosecutions, given that Duch has admitted to many of the allegations against him, although asserting that he was only following orders from above. However, due to the complexities of the case, one in which there are 93 civil parties (represented by 15 attorneys), the trial is expected to last until early July. The court demonstrated its ability to manage the flow of the proceedings in rejecting the Defense's untimely request. A lengthy commentary in Khmer language daily Koh Santepheap on April 1 discussed the Cambodian law, the prohibition against the death penalty, and whether Duch's remorse should affect his sentencing. This is but one example of the heavy coverage in Khmer-language press, illustrating that Justice is being seen to be done at the ECCC by many Cambodians. End Comment.

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